

P26741.A21

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Docket No.: P26741

F. KNAUSEDER

Confirmation No.: 2541

Serial No.: 09/814,066

Group Art Unit: No. 3637

Filed: June 21, 2001

Examiner: M. Safavi

For: **FLOORING PANELS**

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Window, Mail Stop Appeal Brief-Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Sir:

This appeal is from the Examiner's final rejection of claims 1-3, 21-24 and 31-36 as set forth in the Final Office Action of July 28, 2008. A Notice of Appeal, in response to the July 28, 2008 Final Office Action, is being concurrently filed with this Appeal Brief.

Appellant is concurrently submitting herewith the required fee for the Appeal Brief and the Notice of Appeal. No additional fee is believed to be required. However, if for any reason a necessary fee is required for consideration of the instant paper, authorization is hereby given to charge the fee for the Supplemental Appeal Brief and any necessary extension of time fees to Deposit Account No. 19-0089.

TABLE OF CONTENTS

I	REAL PARTY IN INTEREST	Page 3.
II	RELATED APPEALS AND INTERFERENCES	Page 3.
III	STATUS OF CLAIMS	Page 3.
IV	STATUS OF THE AMENDMENTS.....	Pages 3-4.
V	SUMMARY OF THE CLAIMED SUBJECT MATTER.....	Pages 4-6.
VI	GROUND OF REJECTION TO BE REVIEWED ON APPEAL	Pages 6-7.
VII	ARGUMENTS RE. § 103 REJECTIONS	Pages 7-52.
	Part A	Pages 7-24.
	Part B	Pages 24-37.
	Part C	Pages 37-46.
	Part D	Pages 46-55.
	CONCLUSION	Page 56.
VIII	CLAIMS APPENDIX	Pages 57-61.
IX	EVIDENCE APPENDIX	Page 62.
X	RELATED PROCEEDINGS APPENDIX	Page 63.

(I) REAL PARTY IN INTEREST

The real party in interest is M. Kaindl by an assignment recorded in the U.S. Patent and Trademark Office on March 22, 2001, at Reel 011629 and Frame 0843.

(II) RELATED APPEALS AND INTERFERENCES

No related appeals and/or interferences are pending. Appellant, however, is in the process of preparing for Appeal in continuation application No. 11/229,718, and expects to file a Notice of Appeal and Appeal Brief in the November-December 2008 time frame, and prior to receipt of an Examiner's Answer in the instant application.

(III) STATUS OF THE CLAIMS

Claims 1-24 and 26-36 are pending and claims 4-20 and 26-30 have been withdrawn by the Examiner. Claim 25 has been canceled. Claims 1-3, 21-24 and 31-36 stand finally rejected as noted in the July 28, 2008 Final Office Action and are in issue in this appeal. A copy of the claims in issue is attached in the "Claims Appendix".

(IV) STATUS OF THE AMENDMENTS

An Amendment under 37 C.F.R. § 1.116 was filed September 29, 2008, requesting reconsideration of the finally rejected claims. The Examiner responded with an Advisory Action mailed October 16, 2008, indicating that the Response was considered, but did not place the application in condition for allowance and requesting correction of the drawings per the attached form PTO-948. Appellant is filing, concurrently with the instant Appeal Brief, a paper to correct the drawings consistent with the Examiner's requirement in the Advisory Action. Appellant

submits that no other amendments after final have been filed; however, all amendments to the claims have been entered.

(V) SUMMARY OF THE CLAIMED SUBJECT MATTER

A. The Claimed Subject Matter

1. INDEPENDENT CLAIM 1

With reference to pages 2-14 of the instant application and to the figures (see Figs. 1 and 2), and by way of non-limiting example, the invention provides for a configuration for combining flat structural components (panels 1 and 2 of Figs. 1 and 2) of relatively low thickness along their narrow circumferential sides (see page 3, lines 9-11 of the instant application), where connecting members (tongue 6 and groove 5) that interact on the tongue-and-groove principle are provided at the areas being connected. The sides (9) of the groove (5) diverge from a groove base (10) and converge (via tapered portions 8) at an end away from the groove base (10) at an angle that is greater than an angle of divergence (see page 3, lines 17-22 of the instant application). An opening width (defined by the width between edges 25) of the groove (5) is greater than a foremost area of the tongue (6) in a direction of insertion. The tongue (6) exhibits wedge-shaped areas (tapered sides 11) that diverge from front to back at the same angle as the sides (9) of the groove (5), each of which wedge-shaped areas (11) exhibits an undercut (the recesses formed by tapered portions 17) in a back area of the tongue (6) that conforms to the groove (5) cross-section, while the undercut's borders, adjoining the wedge-shaped areas (11), converge at the same angle as the groove sides (9) toward a connecting bridge (the portion of the tongue 6 between the recesses formed by tapered portions 17). A locking mechanism (one or more of the

recesses formed by tapered portions 17 locking with one or more of the edges 25) is integrated into the tongue (6) and the groove (5), wherein a pre-applied adhesive layer (20), or a pre-applied layer of a substance (20) which activates an adhesive, is applied off-site (see page 4, line 31 to page 5, line 12 of the instant application) and is present on the groove (5) at least in the area of its divergent sides (9) or on the tongue (6) at least in the area of its divergent wedge-shaped area (11), or on both areas (9 and 11).

2. INDEPENDENT CLAIM 31

With reference to pages 2-14 of the instant application and to the figures (see Figs. 1 and 2, and by way of non-limiting example, the invention provides for a configuration for combining flat structural panels (panels 1 and 2 of Figs. 1 and 2), comprising: a first panel (1) having a groove (5) comprising a groove opening (the space between edges 25), a groove base (10), at least one locking element (8), and divergent sides (9) extending from the groove base (10) and a second panel (2) having a tongue (6) comprising a divergent wedge shape (defined by tapered sides 11) and at least one locking element (17) which interacts with the at least one locking element (8) of the groove (5) when the first panel (1) and the second panel (2) are joined by inserting the tongue (6) into the groove (5). A pre-applied first layer (20) is arranged on at least one surface of the groove (5) at least in an area of the divergent sides (9) and a pre-applied second layer (20) arranged on at least one surface (11) of the tongue (6) at least in an area of the divergent wedge shape (see Figs. 1B and 2B). Each of the pre-applied first and second layers (20) comprises an adhesive layer or a pre-applied layer of a substance which activates an adhesive (see page 4, line 31 to page 5, line 12 of the instant application).

3. INDEPENDENT CLAIM 34

With reference to pages 2-14 of the instant application and to the figures (see Figs. 1 and 2, and by way of non-limiting example, the invention provides for a configuration for combining flat structural panels (panels 1 and 2 of Figs. 1 and 2), comprising a first panel (1) having a groove (5) comprising a groove opening (the space between edges 25), a groove base (10), at least one locking element (8), and divergent sides (9) extending from the groove base (10), a second panel (2) having a tongue (6) comprising a divergent wedge shape (see Figs. 1-4) and at least one locking element (17) which interacts with the at least one locking element (8) of the groove (5) when the first panel (1) and the second panel (2) are joined by inserting the tongue (6) into the groove (5). A pre-applied first layer (20) is arranged on at least one surface (9) of the groove (5) at least in an area of the divergent sides (9) and a pre-applied second layer (20) arranged on at least one surface (11) of the tongue (6) at least in an area of the divergent wedge shape (formed by tapered sides 11). Each of the pre-applied first and second layers (20) comprises an adhesive layer or a pre-applied layer of a substance which activates an adhesive (see page 4, line 31 to page 5, line 12 of the instant application).

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-3, 21-24 and 31-35 are improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over AT 405 560 in view of DE 297 03 962.

Whether claims 1-3, 21-24 and 31-36 are improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over AT 405 560 in view of DE 297 03 962, and further in view of U.S. Patent No. 6,004,417 issued to ROESCH et al.

Whether claims 32, 33 and 35 are improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over AT 405 560 in view of DE 297 03 962, and further in view

of any of U.S. Patent No. 6,398,902 issued to ROBINS et al., U.S. Patent No. 5,678,715 issued to SJOSTEDT et al., U.S. Patent No. 5,165,826 issued to PARASIN, and U.S. Patent No. 5,157,892 issued to RYTHER.

Whether claims 32, 33 and 35 are improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over AT 405 560 in view of DE 297 03 962 in view of U.S. Patent No. 6,004,417 issued to ROESCH et al., and further in view of any of U.S. Patent No. 6,398,902 issued to ROBINS et al., U.S. Patent No. 5,678,715 issued to SJOSTEDT et al., U.S. Patent No. 5,165,826 issued to PARASIN, and U.S. Patent No. 5,157,892 issued to RYTHER.

(VII) ARGUMENT RE. 103(a) REJECTIONS

A. Rejection of claims 1-3, 21-24 and 31-35 under 35 U.S.C. § 103(a) as being unpatentable over AT 405 560 in view of DE 297 03 962.

REJECTION OF INDEPENDENT CLAIM 1 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962 is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Independent claim 1 recites a configuration for combining flat structural components which utilizes the combination of a tongue and groove connection wherein both the tongue and groove have divergent sides and integrated locking mechanisms and which also includes a pre-applied adhesive layer or a pre-applied layer of a substance which activates adhesive is applied off-site and is present on the groove at least in the area of its divergent sides or on the tongue at least in the area of its divergent wedge-shaped area, or on both areas.

The Examiner acknowledges that AT '560 lacks the recited adhesive between the tongue and groove joints, but explains that DE '962 teaches the use of a contact adhesive in a tongue and groove joint to establish a secure engagement between the panels as well as doing so in a factory

(see pages 2-3 of Final Office Action). The Examiner also explains that the terms “pre-applied adhesive layer” and “applied off site” need not be given patentable weight and that DE ‘962 nevertheless teaches or suggest these features. Appellant respectfully disagrees that the asserted combination of these documents discloses or suggests the combination of features recited in claim 1.

Appellant does not dispute that DE ‘962 apparently teaches a tongue and groove connection between panels, as well as the factory application of glue to adjoining areas, and that AT ‘560 teaches a tongue and groove with locking mechanisms. However, the Examiner has failed to appreciate that, among other things, the factory application of an adhesive is not a *per se* disclosure of a pre-applied adhesive or pre-applied substance because, as will be explained in detail below, a pre-applied adhesive or substance is a type of adhesive or substance that is simply not disclosed or suggested by the applied documents.

Appellant also emphasizes that since DE ‘962 teaches a contact adhesive and, other than the adhesive, lacks any system in the tongue or groove which can create a secure or locking connection, there is no basis to look to the disclosure of AT ‘560, at least because AT ‘560 teaches a locking system between the tongue and groove which does not require an adhesive to provide a secure joint. The locking connection of AT ‘560 essentially renders unnecessary the need for any adhesive to provide a secure or locking joint. This is already accomplished by the locking mechanisms in the tongue and groove of AT ‘560. Moreover, even assuming that DE ‘962 discusses the possible use of a heat activatable contact adhesive, Appellant is unaware of any contact adhesive which is heat activatable. Furthermore, it is submitted that, at best, DE

'962 teaches the mere factory application of an adhesive to form a joint at the factory. In short, because AT '560 lacks any need for adhesive at all, one having ordinary skill in the art would not, based on the disclosure of AT '560 which teaches not to use adhesive in the joint, seek to add the adhesive of DE '962 to the panels in AT '560.

As an initial matter, Appellant acknowledges the Examiner's comments in the Advisory Action that the Board decisions submitted and discussed in the Rule 1.116 Amendment would not be entered because they are alleged to be affidavits or evidence. Appellant submits, however, that legal opinions of the Board are not affidavits or evidence, and cannot be excluded from the record by the Examiner as such. These opinions are therefore discussed herein.

Appellant directs the Examiner's attention to the apparently non-precedential decision *Ex parte MANDRUSOV* (submitted with the Rule 1.116 Amendment) which, on page 5, cites *In re Gurley* and specifically explains:

A reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.

Since DE '962, at best, teaches the mere factory application of an adhesive to form a joint at the factory and AT '560 lacks any adhesive at all, one having ordinary skill in the art following the path set out in DE '962 would not seek to add the adhesive of DE '962 to AT '560. This is because DE '962 at least specifically teaches away from using an adhesive which of the "pre-applied" type as discussed below, i.e., an adhesive that is applied in one location, i.e., off-site, and then activated in another location, e.g., on site. Furthermore, because, as explained above, DE '962 teaches to use adhesive in a non-locking tongue and groove joint, and AT '560 teaches a

locking tongue and groove joint without any adhesive, one having ordinary skill in the art, following the path set out in either AT '560 or DE '962, simply would not seek to add the adhesive of DE '962 to the panels of AT '560. Again, this is because, unlike AT '560, DE '962 specifically does not require any adhesive to produce a secure or locking joint.

Appellant additionally also directs the Examiner's attention to the apparently non-precedential decision *Ex parte BLAICHER* (submitted with the Rule 1.116 Amendment) which, in the paragraph bridging pages 5-6, explains that obviousness cannot be found when prior art disclosures teaches away from their combination by doing the opposite, i.e., one reference specifically teaches to store information while the other specifically teaches not to store information. This is analogous to AT '560 teaching not to use any adhesive in the disclosed joint, while DE '960 teaches to use adhesive – which is the opposite of not using adhesive. This is also analogous to DE '960 disclosing the use of an adhesive in a joint that is formed essentially right after the application of the adhesive and/or at the same location. This is arguably the opposite of AT '560 which teaches not to use any adhesive in the disclosed joint at any time. Furthermore, by applying adhesive to a joint essentially contemporaneously with the joining of the panels, DE '960 also teaches precisely the opposite of the invention which specifically requires the application of a pre-applied adhesive or substance off-site.

The deficiencies of these documents are simply to notable to be ignored. For example, AT '560 does not teach the use of any adhesive in a locking tongue and groove joint. In fact, it would be unnecessary to use an adhesive in AT '560, as it already includes a locking joint. Moreover, DE '962 merely discloses a contact glue which requires that the mating surfaces “be

pressed together with a considerable degree of pressure, making it impossible to additionally adjust the glued joint in the longitudinal direction for the purpose of closing a transverse joint.” Thus, even if these documents were properly combinable (which Appellant disputes), they would nevertheless not disclose or suggest the unique combination of three features in the connection of flat structural panels: that is, (1) a tongue and groove connection with divergent sides; (2) that both the tongue and the groove have a locking mechanisms or elements; and (3) that either the tongue, or the groove, or both of these devices, have a pre-applied adhesive or an adhesive substance as defined above.

Appellant emphasizes that, according to the invention, the application of the adhesive or the substance at least to corresponding divergent surfaces of the tongue and groove and connecting the tongue and groove, causes the tongue to become bonded to the groove by virtue of the divergent surfaces being pushed and remaining in tension. This ensures an especially reliable bonding of the connection. Furthermore, because of the substance placement and the use of the locking elements, the arrangement is such that locking elements help ensure that the substance on the divergent sides cannot come up and out of the connection onto the surface of the panels. Thus, the locking elements act as a locking device and as a device which prevents the spilling out of the adhesive substance. The pre-application of the adhesive or substance at least on the divergent sides also ensures it does not find its way into the locking elements, i.e., thereby ensuring a totally flat surface in the area of the connection of the panels. This is not the case in any of the prior art documents.

Nor would any proper combination of these documents recognize the numerous benefits noted above and/or achieve an automatically secure connection between flat structural panels. For example, the paragraph bridging pages 4 and 5 of the instant specification specifically explains the benefits of this connection as, among other things, reducing the amount of “maneuvers and manual stages involved in laying out the panels on site”. Other noted benefits of pre-applying the substance include: (i) ensuring that a sufficient but not excessive amount of adhesive is used in the connection, (ii) eliminating the problem of glue setting during installation, (iii) providing a seamless joint, and (iv) eliminating the possibility of a welling out of the substance which typically occurs when a glue is applied on site and which can form spots on the surface that must be removed immediately.

Appellant again notes that U.S. Patent No. 4,417,028 to AZEVEDO (a copy of which has been made of record in the instant application) contains an accurate description of such substances. Such substances are typically stable compositions which are prepared and pre-applied to “surfaces prior to the time of assembly, which will remain on the parts during normal storage and shipment, and which will cure upon mating with another part thereby imparting an effective and improved seal or bond.” See col. 1, lines 56-68 of AZEVDO. Such substance also typically ensure that the pre-applied parts “can then be shipped or stored for substantial periods of time prior to cure” and are “dry to the touch”. Finally, such substances may also have the attribute that “when crushed or ground by a mating surface, cures to a strong bond” (see col. 2, lines 1-22 of AZEVDO). Indeed, these properties, as well as other properties, are specifically acknowledged

and noted on pages 5-14 of the instant specification in discussing examples of the types of substances which can be utilized in the invention.

Finally, Appellant reminds the Examiner that to the extent that the Examiner believes that he may construe the adhesive or adhesive substance language of claim 1 “broadly” to encompass the disclosed adhesive of DE ‘962, Appellant reminds the Examiner that the “broadest reasonable interpretation” standard must be one that “would be understood by one of ordinary skill in the art, taking into consideration the description of the applicant’s specification. *In re Morris*, 127 F.3D 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997)”. See page 3 of the non-precedential decision *Ex parte HADDAD* (submitted with the Rule 1.116 Amendment). At the very least Appellant is entitled to a definition of “pre-applied” which Appellant has established during prosecution. See page 4 of the non-precedential decision *Ex parte HADDAD*.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least independent claim 1.

REJECTION OF INDEPENDENT CLAIM 31 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 31 under 35 U.S.C. § 103(a) as being unpatentable over AT ‘560 in view of DE ‘962 is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Independent claim 31 similarly recites the combination of a tongue and groove connection. Both the tongue and groove have divergent sides and locking elements and also

includes a pre-applied adhesive layer or pre-applied substance which activates an adhesive applied off-site and being present on the groove at least in the area of the divergent sides or on the tongue at least in the area of the divergent wedge-shaped area, or on both areas.

The Examiner acknowledges that AT '560 lacks the recited adhesive between the tongue and groove joints, but explains that DE '962 teaches the use of a contact adhesive in a tongue and groove joint to establish a secure engagement between the panels. Appellant respectfully disagrees that the asserted combination of these documents discloses or suggests the combination of features recited in claim 31 for reasons that are similar to those noted above with regard to claim 1.

Again, the Examiner has ignored the noted deficiencies of these documents. For example, AT '560 does not teach the use of any adhesive in a locking tongue and groove joint. Moreover, DE '962 merely discloses a contact glue which requires that the mating surfaces "be pressed together with a considerable degree of pressure, making it impossible to additionally adjust the glued joint in the longitudinal direction for the purpose of closing a transverse joint." Thus, even if these documents were properly combinable (which Appellant disputes) they would nevertheless not disclose or suggest the unique combination of three features in the connection of flat structural panels: that is, (1) a tongue and groove connection with divergent sides; (2) that both the tongue and the groove have a locking mechanisms or elements; and (3) that either the tongue, or the groove, or both of these devices, have a pre-applied adhesive or an adhesive substance as defined above.

Appellant emphasizes that the application of the adhesive or the substance at least to corresponding divergent surfaces of the tongue and groove and connecting the tongue and groove, causes the tongue to become bonded to the groove by virtue of the divergent surfaces being pushed and remaining in tension. This ensures an especially reliable bonding of the connection. Furthermore, because of the substance placement and the use of the locking elements, the arrangement is such that locking elements help ensure that the substance on the divergent sides cannot come up and out of the connection onto the surface of the panels. Thus, the locking elements act as a locking device and as a device which prevents the spilling out of the adhesive substance. The pre-application of the adhesive or substance at least on the divergent sides also ensures it does not find its way into the locking elements, i.e., thereby ensuring a totally flat surface in the area of the connection of the panels.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least independent claim 31.

REJECTION OF INDEPENDENT CLAIM 34 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 34 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962 is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Independent claim 34 similarly recites the combination of a tongue and groove connection. Both the tongue and groove have divergent sides and locking elements and also

P26741.A21

includes a pre-applied adhesive layer or pre-applied substance which activates an adhesive applied off-site and being present on the groove at least in the area of the divergent sides or on the tongue at least in the area of the divergent wedge-shaped area, or on both areas.

The Examiner acknowledges that AT '560 lacks the recited adhesive between the tongue and groove joints, but explains that DE '962 teaches the use of a contact adhesive in a tongue and groove joint to establish a secure engagement between the panels. Appellant respectfully disagrees that the asserted combination of these documents discloses or suggests the combination of features recited in claim 34 for reasons that are similar to those noted above with regard to claim 1.

Again, the Examiner has ignored the noted deficiencies of these documents. For example, AT '560 does not teach the use of any adhesive in a locking tongue and groove joint. Moreover, DE '962 merely discloses a contact glue which requires that the mating surfaces "be pressed together with a considerable degree of pressure, making it impossible to additionally adjust the glued joint in the longitudinal direction for the purpose of closing a transverse joint." Thus, even if these documents were properly combinable (which Appellant disputes) they would nevertheless not disclose or suggest the unique combination of three features in the connection of flat structural panels: that is, (1) a tongue and groove connection with divergent sides; (2) that both the tongue and the groove have a locking mechanisms or elements; and (3) that either the tongue, or the groove, or both of these devices, have a pre-applied adhesive or an adhesive substance as defined above.

Appellant emphasizes that the application of the adhesive or the substance at least to corresponding divergent surfaces of the tongue and groove and connecting the tongue and groove, causes the tongue to become bonded to the groove by virtue of the divergent surfaces being pushed and remaining in tension. This ensures an especially reliable bonding of the connection. Furthermore, because of the substance placement and the use of the locking elements, the arrangement is such that locking elements help ensure that the substance on the divergent sides cannot come up and out of the connection onto the surface of the panels. Thus, the locking elements act as a locking device and as a device which prevents the spilling out of the adhesive substance. The pre-application of the adhesive or substance at least on the divergent sides also ensures it does not find its way into the locking elements, i.e., thereby ensuring a totally flat surface in the area of the connection of the panels.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least independent claim 34.

REJECTION OF DEPENDENT CLAIM 3 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 3 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962 is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

P26741.A21

Claim 3 recites the configuration of claim 1 and wherein the grooves of the individual panels are provided with the pre-applied adhesive layer, or the pre-applied layer of a substance which activates an adhesive having the form of a filling, a coating, a covering, or a strand, and the tongues are provided with the pre-applied adhesive layer, or the pre-applied layer of a substance which activates an adhesive having the form of a coating, a surface impregnation, a covering, or a strand. No proper combination of the above-noted documents discloses or suggests these additional features.

On page 3 of the Final Office Action, the Examiner explains that DE '962 teaches or suggests the features recited in claim 3 and that it would have been obvious to combine the teachings of AT '560 and DE '962 so as to render the features of claim 3 obvious. Appellant disagrees.

AT '560 does not teach the use of any adhesive in a locking tongue and groove joint. Moreover, DE '962 merely discloses a contact glue which requires that the mating surfaces "be pressed together with a considerable degree of pressure, making it impossible to additionally adjust the glued joint in the longitudinal direction for the purpose of closing a transverse joint." Thus, even if these documents were properly combinable (which Appellant disputes) they would nevertheless not disclose or suggest the unique combination of three features in the connection of flat structural panels: that is, (1) a tongue and groove connection with divergent sides; (2) that both the tongue and the groove have a locking mechanisms or elements; and (3) that either the tongue, or the groove, or both of these devices, have a pre-applied adhesive or an adhesive substance as defined in claim 1. As such, these documents also cannot disclose or suggest that

P26741.A21

the grooves of the individual panels are provided with the pre-applied adhesive layer, or the pre-applied layer of a substance which activates an adhesive having the form of a filling, a coating, a covering, or a strand, and/or that the tongues are provided with the pre-applied adhesive layer, or the pre-applied layer of a substance which activates an adhesive having the form of a coating, a surface impregnation, a covering, or a strand.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 3.

REJECTION OF DEPENDENT CLAIM 32 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 32 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962 is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 32 recites the configuration of claim 31 and wherein the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

Other than alleging on page 4 of the Final Office Action that page 4, lines 1-6 and page 5, lines 7-9 of DE 962 teach the features of claim 32, the Examiner has failed to specifically identify the recited feature of claim 32 in the applied documents. As a result, Appellant submits

that the Examiner has failed to establish a *prima facie* case of obviousness.

Again, AT '560 does not teach the use of any adhesive in a locking tongue and groove joint. Moreover, DE '962 merely discloses a contact glue which requires that the mating surfaces "be pressed together with a considerable degree of pressure, making it impossible to additionally adjust the glued joint in the longitudinal direction for the purpose of closing a transverse joint." Thus, even if these documents were properly combinable (which Appellant disputes) they would nevertheless not disclose or suggest the unique combination of three features in the connection of flat structural panels: that is, (1) a tongue and groove connection with divergent sides; (2) that both the tongue and the groove have a locking mechanisms or elements; and (3) that either the tongue, or the groove, or both of these devices, have a pre-applied adhesive or an adhesive substance as defined in claim 31.

As none of the above-noted applied documents discloses or suggests a pre-applied adhesive layer or a pre-applied layer of a substance which activates an adhesive, these documents cannot be read to disclose or suggest that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 32.

REJECTION OF DEPENDENT CLAIM 33 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 33 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962 is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 33 recites the configuration of claim 1 and that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

Other than alleging on page 4 of the Final Office Action that page 4, lines 1-6 and page 5, lines 7-9 of DE 962 teach the features of claim 33, the Examiner has failed to specifically identify the recited feature of claim 33 in the applied documents. As a result, Appellant submits that the Examiner has failed to establish a *prima facie* case of obviousness.

Again, AT '560 does not teach the use of any adhesive in a locking tongue and groove joint. Moreover, DE '962 merely discloses a contact glue which requires that the mating surfaces "be pressed together with a considerable degree of pressure, making it impossible to additionally adjust the glued joint in the longitudinal direction for the purpose of closing a transverse joint." Thus, even if these documents were properly combinable (which Appellant disputes) they would nevertheless not disclose or suggest the unique combination of three features in the connection of flat structural panels: that is, (1) a tongue and groove connection with divergent sides; (2) that both the tongue and the groove have a locking mechanisms or elements; and (3) that either the

tongue, or the groove, or both of these devices, have a pre-applied adhesive or an adhesive substance as defined in claim 1.

As none of the above-noted applied documents discloses or suggests a pre-applied adhesive layer or a pre-applied layer of a substance which activates an adhesive, these documents cannot be read to disclose or suggest that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 33.

REJECTION OF DEPENDENT CLAIM 35 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 35 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962 is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 35 recites the configuration of claim 34 and that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

Other than alleging on page 4 of the Final Office Action that page 4, lines 1-6 and page 5, lines 7-9 of DE 962 teach the features of claim 35, the Examiner has failed to specifically identify the recited feature of claim 35 in the applied documents. As a result, Appellant submits that the Examiner has failed to establish a *prima facie* case of obviousness.

Again, AT '560 does not teach the use of any adhesive in a locking tongue and groove joint. Moreover, DE '962 merely discloses a contact glue which requires that the mating surfaces "be pressed together with a considerable degree of pressure, making it impossible to additionally adjust the glued joint in the longitudinal direction for the purpose of closing a transverse joint." Thus, even if these documents were properly combinable (which Appellant disputes) they would nevertheless not disclose or suggest the unique combination of three features in the connection of flat structural panels: that is, (1) a tongue and groove connection with divergent sides; (2) that both the tongue and the groove have a locking mechanisms or elements; and (3) that either the tongue, or the groove, or both of these devices, have a pre-applied adhesive or an adhesive substance as defined in claim 34.

As none of the above-noted applied documents discloses or suggests a pre-applied adhesive layer or a pre-applied layer of a substance which activates an adhesive, these documents cannot be read to disclose or suggest that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together.

Because the combination of the above-noted documents fails to disclose, or even suggest,

P26741.A21

at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 35.

REJECTION OF DEPENDENT CLAIM 2 AND 21-24 UNDER 35 U.S.C. § 103 IS IN ERROR

The dependent claims which are not specifically discussed above stand or fall with the claims from which they depend.

B. Rejection of claims 1-3, 21-24 and 31-36 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962, and further in view of U.S. Patent No. 6,004,417 issued to ROESCH et al.

REJECTION OF INDEPENDENT CLAIM 1 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962, and further in view of ROESCH is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

The Examiner acknowledges that AT '560 lacks the recited adhesive between the tongue and groove joints, but explains that DE '962 teaches the use of a pre-applied contact adhesive in a tongue and groove joint to establish a secure engagement between the panels. Finally, the Examiner cites ROESCH for its disclosure of a two-component adhesive.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 1 based on AT '560 in view of DE '962.

Appellant also disputes the relevancy of ROESCH and asserts that it does not cure the noted deficiencies of AT '560 in view of DE '962. In particular, Appellant submits that

ROESCH, like AT '560 in view of DE '962, is completely silent with regard to a pre-applied adhesive layer or activator substance. Furthermore, whereas the invention relates to flat structural components or panels using a tongue and groove locking connection having a pre-applied adhesive or adhesive activator, ROESCH relates to a connection between plastic pipe parts which can be pre-applied with an adhesive (see Fig. 3).

Appellant emphasizes that the adhesive system of ROESCH, which relates to a plastic pipe joint, has not been shown to be usable in the context of flooring panels. Furthermore, ROESCH teach or suggest using such an adhesive in the context of a locking joint between a tongue and groove, much less, doing so on flooring panels. In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROESCH on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for plastic, it is not merely a simple substitution of one element for another element, as plastic adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least independent claim 1.

REJECTION OF INDEPENDENT CLAIM 31 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 31 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962, and further in view of ROESCH is in error, the decision of the

P26741.A21

Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Independent claim 31 similarly recites the combination of a tongue and groove connection wherein both the tongue and groove have divergent sides and locking elements and also includes a pre-applied adhesive layer or pre-applied substance which activates an adhesive applied off-site and being present on the groove at least in the area of the divergent sides or on the tongue at least in the area of the divergent wedge-shaped area, or on both areas.

The Examiner acknowledges that AT '560 lacks the recited adhesive between the tongue and groove joints, but explains that DE '962 teaches the use of a pre-applied contact adhesive in a tongue and groove joint to establish a secure engagement between the panels. Finally, the Examiner cites ROESCH for its disclosure of a two-component adhesive.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 31 based on AT '560 in view of DE '962.

Appellant also disputes the relevancy of ROESCH and asserts that it does not cure the noted deficiencies of AT '560 in view of DE '962. In particular, Appellant submits that ROESCH, like AT '560 in view of DE '962, is completely silent with regard to a pre-applied adhesive layer or activator substance. Furthermore, whereas the invention relates to flat structural components or panels using a tongue and groove locking connection having a pre-applied adhesive or adhesive activator, ROESCH relates to a connection between plastic pipe parts which can be pre-applied with an adhesive (see Fig. 3).

Again, Appellant emphasizes that the adhesive system of ROESCH, which relates to a plastic pipe joint, has not been shown to be usable in the context of flooring panels. Furthermore, ROESCH teach or suggest using such an adhesive in the context of a locking joint between a tongue and groove, much less, doing so on flooring panels. In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROESCH on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for plastic, it is not merely a simple substitution of one element for another element, as plastic adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least independent claim 31.

REJECTION OF INDEPENDENT CLAIM 34 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 34 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962, and further in view of ROESCH is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Independent claim 34 similarly recites similarly recites the combination of a tongue and groove connection wherein both the tongue and groove have divergent sides and locking elements and additionally includes a pre-applied first layer arranged on at least one surface of the

groove at least in an area of the divergent sides and a pre-applied second layer arranged on at least one surface of the tongue at least in an area of the divergent wedge shape, wherein each of the pre-applied first and second layers comprises an adhesive layer or a pre-applied layer of a substance which activates an adhesive.

The Examiner acknowledges that AT '560 lacks the recited adhesive between the tongue and groove joints, but explains that DE '962 teaches the use of a pre-applied contact adhesive in a tongue and groove joint to establish a secure engagement between the panels. Finally, the Examiner cites ROESCH for its disclosure of a two-component adhesive.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 34 based on AT '560 in view of DE '962.

Appellant also disputes the relevancy of ROESCH and asserts that it does not cure the noted deficiencies of AT '560 in view of DE '962. In particular, Appellant submits that ROESCH, like AT '560 in view of DE '962, is completely silent with regard to a pre-applied adhesive layer or activator substance. Furthermore, whereas the invention relates to flat structural components or panels using a tongue and groove locking connection having a pre-applied adhesive or adhesive activator, ROESCH relates to a connection between plastic pipe parts which can be pre-applied with an adhesive (see Fig. 3).

Again, Appellant emphasizes that the adhesive system of ROESCH, which relates to a plastic pipe joint, has not been shown to be usable in the context of flooring panels. Furthermore, ROESCH teach or suggest using such an adhesive in the context of a locking joint between a tongue and groove, much less, doing so on flooring panels. In fact, in accordance with

MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROESCH on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for plastic, it is not merely a simple substitution of one element for another element, as plastic adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least independent claim 34.

REJECTION OF DEPENDENT CLAIM 3 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 3 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962, and further in view of ROESCH is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 3 recites the configuration of claim 1 and wherein the grooves of the individual panels are provided with a filling, coating, covering or strand, comprising a latent adhesive material that becomes active after appropriate activation, and the tongues are provided with a coating or surface impregnation, a covering or strand is applied to the panels and moistens them shortly before they are joined together and comprises an activator which induces adhesion. No proper combination of the above-noted documents discloses or suggests these additional features.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 3 based on AT '560 in view of DE '962.

Appellant also disputes the relevancy of ROESCH and asserts that it does not cure the noted deficiencies of AT '560 in view of DE '962. In particular, Appellant submits that ROESCH, like AT '560 in view of DE '962, is completely silent with regard to a pre-applied adhesive layer or activator substance. Furthermore, whereas the invention relates to flat structural components or panels using a tongue and groove locking connection having a pre-applied adhesive or adhesive activator, ROESCH relates to a connection between plastic pipe parts which can be pre-applied with an adhesive (see Fig. 3).

As ROESCH relates to a plastic pipe joint, and has not been shown to be usable in the context of flooring panels and/or fails to teach or suggest using such an adhesive in the context of a locking joint between a tongue and groove, ROESCH cannot be said to teach or suggest that the grooves of the individual panels are provided with a filling, coating, covering or strand, comprising a latent adhesive material that becomes active after appropriate activation, and the tongues are provided with a coating or surface impregnation, a covering or strand is applied to the panels and moistens them shortly before they are joined together and comprises an activator which induces adhesion. In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROESCH on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for plastic, it is not merely a simple substitution of one element for another

element, as plastic adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 3.

REJECTION OF DEPENDENT CLAIM 32 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 32 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962, and further in view of ROESCH is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 32 recites the configuration of claim 31 and wherein the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 32 based on AT '560 in view of DE '962.

Appellant also disputes the relevancy of ROESCH and asserts that it does not cure the noted deficiencies of AT '560 in view of DE '962. In particular, Appellant submits that ROESCH, like AT '560 in view of DE '962, is completely silent with regard to a pre-applied

P26741.A21

adhesive layer or activator substance. Furthermore, whereas the invention relates to flat structural components or panels using a tongue and groove locking connection having a pre-applied adhesive or adhesive activator, ROESCH relates to a connection between plastic pipe parts which can be pre-applied with an adhesive (see Fig. 3).

As ROESCH relates to a plastic pipe joint, and has not been shown to be usable in the context of flooring panels and/or fails to teach or suggest using such an adhesive in the context of a locking joint between a tongue and groove, ROESCH cannot be said to teach or suggest that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together. In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROESCH on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for plastic, it is not merely a simple substitution of one element for another element, as plastic adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 32.

REJECTION OF DEPENDENT CLAIM 33 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 33 under 35 U.S.C. § 103(a) as being unpatentable over

AT '560 in view of DE '962, and further in view of ROESCH is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 33 recites the configuration of claim 1 and that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 33 based on AT '560 in view of DE '962.

Appellant also disputes the relevancy of ROESCH and asserts that it does not cure the noted deficiencies of AT '560 in view of DE '962. In particular, Appellant submits that ROESCH, like AT '560 in view of DE '962, is completely silent with regard to a pre-applied adhesive layer or activator substance. Furthermore, whereas the invention relates to flat structural components or panels using a tongue and groove locking connection having a pre-applied adhesive or adhesive activator, ROESCH relates to a connection between plastic pipe parts which can be pre-applied with an adhesive (see Fig. 3).

As ROESCH relates to a plastic pipe joint, and has not been shown to be usable in the context of flooring panels and/or fails to teach or suggest using such an adhesive in the context of a locking joint between a tongue and groove, ROESCH cannot be said to teach or suggest that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive

is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROESCH on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for plastic, it is not merely a simple substitution of one element for another element, as plastic adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 33.

REJECTION OF DEPENDENT CLAIM 35 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 35 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962, and further in view of ROESCH is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 35 recites the configuration of claim 34 and that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 35 based on AT '560 in view of DE '962.

Appellant also disputes the relevancy of ROESCH and asserts that it does not cure the noted deficiencies of AT '560 in view of DE '962. In particular, Appellant submits that ROESCH, like AT '560 in view of DE '962, is completely silent with regard to a pre-applied adhesive layer or activator substance. Furthermore, whereas the invention relates to flat structural components or panels using a tongue and groove locking connection having a pre-applied adhesive or adhesive activator, ROESCH relates to a connection between plastic pipe parts which can be pre-applied with an adhesive (see Fig. 3).

As ROESCH relates to a plastic pipe joint, and has not been shown to be usable in the context of flooring panels and/or fails to teach or suggest using such an adhesive in the context of a locking joint between a tongue and groove, ROESCH cannot be said to teach or suggest that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROESCH on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for plastic, it is not merely a simple substitution of one element for another element, as plastic adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

Because the combination of the above-noted documents fails to disclose, or even suggest,

at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 35.

REJECTION OF DEPENDENT CLAIM 36 UNDER 35 U.S.C. § 103 IS IN ERROR

The rejection of claim 36 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962, and further in view of ROESCH is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 36 recites the configuration of claim 34 and that the pre-applied first layer comprises one component of a two-component glue and wherein the pre-applied second layer comprises another component of the two-component glue. No proper combination of the above-noted documents discloses or suggests these additional features.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 34, from which claim 36 depends, based on AT '560 in view of DE '962.

Appellant also disputes the relevancy of ROESCH and asserts that it does not cure the noted deficiencies of AT '560 in view of DE '962. In particular, Appellant submits that ROESCH, like AT '560 in view of DE '962, is completely silent with regard to a pre-applied adhesive layer or activator substance. Furthermore, whereas the invention relates to flat structural components or panels using a tongue and groove locking connection having a pre-applied adhesive or adhesive activator, ROESCH relates to a connection between plastic pipe parts which can be pre-applied with an adhesive (see Fig. 3).

As ROESCH relates to a plastic pipe joint, and has not been shown to be usable in the

P26741.A21

context of flooring panels and/or fails to teach or suggest using such an adhesive in the context of a locking joint between a tongue and groove, ROESCH cannot be said to teach or suggest that the pre-applied first layer comprises one component of a two-component glue and wherein the pre-applied second layer comprises another component of the two-component glue. In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROESCH on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for plastic, it is not merely a simple substitution of one element for another element, as plastic adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 36.

REJECTION OF DEPENDENT CLAIMS 2 AND 21-24 UNDER 35 U.S.C. § 103 IS IN ERROR

The dependent claims which are not specifically discussed above stand of fall with the claims from which they depend.

C. Rejection of claims 32, 33 and 35 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962, and further in view of any of U.S. Patent No. 6,398,902 issued to ROBINS et al., U.S. Patent No. 5,678,715 issued to SJOSTEDT et al., U.S. Patent No. 5,165,826 issued to PARASIN, and U.S. Patent No. 5,157,892 issued to RYTHER.

REJECTION OF DEPENDENT CLAIM 32 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 32 under 35 U.S.C. § 103(a) as being unpatentable over

AT '560 in view of DE '962, and further in view of any of ROBINS, SJOSTEDT, PARASIN and RYTHERR is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 32 recites the configuration of claim 31 and wherein the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

On pages 6-7 of the Final Office Action, the Examiner opines that the amount of adhesive which is applied would be obvious to one having ordinary skill in the art and alternatively that each of ROBINS, SJOSTEDT, PARASIN and RYTHERR "recognize the undesirability of excess adhesive seepage and therefore teach to abate as much as possible any undesirable effects of any possible excess adhesive seepage". The Examiner also cites col. 4, lines 11-13 of ROBINS, col. 9, line 65 to col. 10, line 10 of SJOSTEDT, col. 3, lines 18-20 and claim 4 of PARASIN, and col. 1, lines 63-67, col. 2, lines 32-36, col. 3, lines 18-20, and col. 4, lines 33-35 of RYTHERR.

Appellant disagrees. The Examiner has simply failed to identify any one or more of the recited features in the applied documents. As a result, Appellant submits that the Examiner has failed to establish a *prima facie* case of obviousness. Furthermore, Appellant submits that none of the above-noted applied documents discloses or suggests that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels

when the flat structural panels are joined together.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 32 based on AT '560 in view of DE '962.

ROBINS fails to cure the deficiencies of AT '560 in view of DE '962. ROBINS relates to an adhesive connection between tube parts of a waveguide (see col. 4, lines 7-13). Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, ROBINS specifically discloses to apply an amount which "completely fills the void between the butt joint sections 12, 12' (see col. 4, lines 8-10).

SJOSTEDT also fails to cure the deficiencies of the above-noted documents. SJOSTEDT relates to an adhesive connection between parts of a shipping container (see Abstract). Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, SJOSTEDT specifically discloses that "[e]xcess adhesive material A in the joint 292 can be relieved into the spaces or the cavity 302 so as not to interfere with accurate fit-up of adjoining side panels" (see col. 10, lines 4-8).

In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROBINS and SJOSTEDT on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for non-wood applications, it is not merely a simple substitution of one element

for another element, as non-wood adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

PARASIN also fails to cure the deficiencies of the above-noted documents. Whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, PARASIN specifically discloses that “[w]hen assembling joints, glue may be applied to the tongue and groove profiles, the application of glue is optional. The spaces 42 between the tongue head and the groove head chamfered surfaces define a gap to accommodate excess glue.” See col. 3, lines 16-20.

RYTHER also fails to cure the deficiencies of the above-noted documents. Again, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, RYTHER merely relates to an adhesive connection between ribs of a structural panel (see Abstract) and specifically discloses a joint which accommodates “any excess glue forced out by the joining process” (see col. 3, lines 13-20 and col. 4, lines 23-35).

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 32.

REJECTION OF DEPENDENT CLAIM 33 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 33 under 35 U.S.C. § 103(a) as being unpatentable over

AT '560 in view of DE '962, and further in view of any of ROBINS, SJOSTEDT, PARASIN and RYTHER is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 33 recites the configuration of claim 1 and that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

On pages 6-7 of the Final Office Action, the Examiner opines that the amount of adhesive which is applied would be obvious to one having ordinary skill in the art and alternatively that each of ROBINS, SJOSTEDT, PARASIN and RYTHER "recognize the undesirability of excess adhesive seepage and therefore teach to abate as much as possible any undesirable effects of any possible excess adhesive seepage". The Examiner also cites col. 4, lines 11-13 of ROBINS, col. 9, line 65 to col. 10, line 10 of SJOSTEDT, col. 3, lines 18-20 and claim 4 of PARASIN, and col. 1, lines 63-67, col. 2, lines 32-36, col. 3, lines 18-20, and col. 4, lines 33-35 of RYTHER.

Appellant disagrees. The Examiner has simply failed to identify any one or more of the recited features in the applied documents. As a result, Appellant submits that the Examiner has failed to establish a *prima facie* case of obviousness. Furthermore, Appellant submits that none of the above-noted applied documents discloses or suggests that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels

when the flat structural panels are joined together.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 33 based on AT '560 in view of DE '962.

ROBINS fails to cure the deficiencies of AT '560 in view of DE '962. ROBINS relates to an adhesive connection between tube parts of a waveguide (see col. 4, lines 7-13).

Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, ROBINS specifically discloses to apply an amount which "completely fills the void between the butt joint sections 12, 12' (see col. 4, lines 8-10).

SJOSTEDT also fails to cure the deficiencies of the above-noted documents. SJOSTEDT relates to an adhesive connection between parts of a shipping container (see Abstract). Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, SJOSTEDT specifically discloses that "[e]xcess adhesive material A in the joint 292 can be relieved into the spaces or the cavity 302 so as not to interfere with accurate fit-up of adjoining side panels" (see col. 10, lines 4-8).

In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROBINS and SJOSTEDT on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for non-wood applications, it is not merely a simple substitution of one element

P26741.A21

for another element, as non-wood adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

PARASIN also fails to cure the deficiencies of the above-noted documents. Whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, PARASIN specifically discloses that “[w]hen assembling joints, glue may be applied to the tongue and groove profiles, the application of glue is optional. The spaces 42 between the tongue head and the groove head chamfered surfaces define a gap to accommodate excess glue.” See col. 3, lines 16-20.

RYTHER also fails to cure the deficiencies of the above-noted documents. Again, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, RYTHER merely relates to an adhesive connection between ribs of a structural panel (see Abstract) and specifically discloses a joint which accommodates “any excess glue forced out by the joining process” (see col. 3, lines 13-20 and col. 4, lines 23-35).

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 33.

REJECTION OF DEPENDENT CLAIM 35 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 35 under 35 U.S.C. § 103(a) as being unpatentable over

AT '560 in view of DE '962, and further in view of any of ROBINS, SJOSTEDT, PARASIN and RYTHER is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 35 recites the configuration of claim 34 and that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

On pages 6-7 of the Final Office Action, the Examiner opines that the amount of adhesive which is applied would be obvious to one having ordinary skill in the art and alternatively that each of ROBINS, SJOSTEDT, PARASIN and RYTHER "recognize the undesirability of excess adhesive seepage and therefore teach to abate as much as possible any undesirable effects of any possible excess adhesive seepage". The Examiner also cites col. 4, lines 11-13 of ROBINS, col. 9, line 65 to col. 10, line 10 of SJOSTEDT, col. 3, lines 18-20 and claim 4 of PARASIN, and col. 1, lines 63-67, col. 2, lines 32-36, col. 3, lines 18-20, and col. 4, lines 33-35 of RYTHER.

Appellant disagrees. The Examiner has simply failed to identify any one or more of the recited features in the applied documents. As a result, Appellant submits that the Examiner has failed to establish a *prima facie* case of obviousness. Furthermore, Appellant submits that none of the above-noted applied documents discloses or suggests that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels

when the flat structural panels are joined together.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 35 based on AT '560 in view of DE '962.

ROBINS fails to cure the deficiencies of AT '560 in view of DE '962. ROBINS relates to an adhesive connection between tube parts of a waveguide (see col. 4, lines 7-13). Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, ROBINS specifically discloses to apply an amount which "completely fills the void between the butt joint sections 12, 12' (see col. 4, lines 8-10).

SJOSTEDT also fails to cure the deficiencies of the above-noted documents. SJOSTEDT relates to an adhesive connection between parts of a shipping container (see Abstract). Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, SJOSTEDT specifically discloses that "[e]xcess adhesive material A in the joint 292 can be relieved into the spaces or the cavity 302 so as not to interfere with accurate fit-up of adjoining side panels" (see col. 10, lines 4-8).

In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROBINS and SJOSTEDT on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed substance is used for non-wood applications, it is not merely a simple substitution of one element

for another element, as non-wood adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

PARASIN also fails to cure the deficiencies of the above-noted documents. Whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, PARASIN specifically discloses that “[w]hen assembling joints, glue may be applied to the tongue and groove profiles, the application of glue is optional. The spaces 42 between the tongue head and the groove head chamfered surfaces define a gap to accommodate excess glue.” See col. 3, lines 16-20.

RYTHER also fails to cure the deficiencies of the above-noted documents. Again, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, RYTHER merely relates to an adhesive connection between ribs of a structural panel (see Abstract) and specifically discloses a joint which accommodates “any excess glue forced out by the joining process” (see col. 3, lines 13-20 and col. 4, lines 23-35).

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 35.

D. Rejection of claims 32, 33 and 35 under 35 U.S.C. § 103(a) as being unpatentable over AT ‘560 in view of DE ‘962 in view of ROESCH, and further in view of any one of ROBINS, SJOSTEDT, PARASIN and RYTHER.

REJECTION OF DEPENDENT CLAIM 32 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 32 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962 in view of ROESCH, and still further in view of any of ROBINS, SJOSTEDT, PARASIN and RYTER is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 32 recites the configuration of claim 31 and wherein the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

On pages 7-8 of the Final Office Action, the Examiner opines that the amount of adhesive which is applied would be obvious to one having ordinary skill in the art and alternatively that each of ROBINS, SJOSTEDT, PARASIN and RYTER "recognize the undesirability of excess adhesive seepage and therefore teach to abate as much as possible any undesirable effects of any possible excess adhesive seepage". The Examiner also cites col. 4, lines 11-13 of ROBINS, col. 9, line 65 to col. 10, line 10 of SJOSTEDT, col. 3, lines 18-20 and claim 4 of PARASIN, and col. 1, lines 63-67, col. 2, lines 32-36, col. 3, lines 18-20, and col. 4, lines 33-35 of RYTER.

Appellant disagrees. The Examiner has simply failed to identify any one or more of the recited features in the applied documents. As a result, Appellant submits that the Examiner has failed to establish a *prima facie* case of obviousness. Furthermore, Appellant submits that none of the above-noted applied documents discloses or suggests that the pre-applied adhesive layer or

the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 32 based on AT '560 in view of DE '962 and ROESCH.

ROBINS fails to cure the deficiencies of AT '560 in view of DE '962. ROBINS relates to an adhesive connection between tube parts of a waveguide (see col. 4, lines 7-13). Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, ROBINS specifically discloses to apply an amount which "completely fills the void between the butt joint sections 12, 12' (see col. 4, lines 8-10).

SJOSTEDT also fails to cure the deficiencies of the above-noted documents. SJOSTEDT relates to an adhesive connection between parts of a shipping container (see Abstract). Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, SJOSTEDT specifically discloses that "[e]xcess adhesive material A in the joint 292 can be relieved into the spaces or the cavity 302 so as not to interfere with accurate fit-up of adjoining side panels" (see col. 10, lines 4-8).

In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROBINS and SJOSTEDT on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed

substance is used for non-wood applications, it is not merely a simple substitution of one element for another element, as non-wood adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

PARASIN also fails to cure the deficiencies of the above-noted documents. Whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, PARASIN specifically discloses that “[w]hen assembling joints, glue may be applied to the tongue and groove profiles, the application of glue is optional. The spaces 42 between the tongue head and the groove head chamfered surfaces define a gap to accommodate excess glue.” See col. 3, lines 16-20.

RYTHER also fails to cure the deficiencies of the above-noted documents. Again, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, RYTHER merely relates to an adhesive connection between ribs of a structural panel (see Abstract) and specifically discloses a joint which accommodates “any excess glue forced out by the joining process” (see col. 3, lines 13-20 and col. 4, lines 23-35).

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 32.

REJECTION OF DEPENDENT CLAIM 33 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 33 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962 in view of ROESCH, and further in view of any one of ROBINS, SJOSTEDT, PARASIN and RYTER is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 33 recites the configuration of claim 1 and that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

On pages 7-8 of the Final Office Action, the Examiner opines that the amount of adhesive which is applied would be obvious to one having ordinary skill in the art and alternatively that each of ROBINS, SJOSTEDT, PARASIN and RYTER "recognize the undesirability of excess adhesive seepage and therefore teach to abate as much as possible any undesirable effects of any possible excess adhesive seepage". The Examiner also cites col. 4, lines 11-13 of ROBINS, col. 9, line 65 to col. 10, line 10 of SJOSTEDT, col. 3, lines 18-20 and claim 4 of PARASIN, and col. 1, lines 63-67, col. 2, lines 32-36, col. 3, lines 18-20, and col. 4, lines 33-35 of RYTER.

Appellant disagrees. The Examiner has simply failed to identify any one or more of the recited features in the applied documents. As a result, Appellant submits that the Examiner has failed to establish a *prima facie* case of obviousness. Furthermore, Appellant submits that none of the above-noted applied documents discloses or suggests that the pre-applied adhesive layer or

the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 33 based on AT '560 in view of DE '962 and ROESCH.

ROBINS fails to cure the deficiencies of AT '560 in view of DE '962. ROBINS relates to an adhesive connection between tube parts of a waveguide (see col. 4, lines 7-13).

Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, ROBINS specifically discloses to apply an amount which "completely fills the void between the butt joint sections 12, 12' (see col. 4, lines 8-10).

SJOSTEDT also fails to cure the deficiencies of the above-noted documents. SJOSTEDT relates to an adhesive connection between parts of a shipping container (see Abstract).

Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, SJOSTEDT specifically discloses that "[e]xcess adhesive material A in the joint 292 can be relieved into the spaces or the cavity 302 so as not to interfere with accurate fit-up of adjoining side panels" (see col. 10, lines 4-8).

In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROBINS and SJOSTEDT on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed

substance is used for non-wood applications, it is not merely a simple substitution of one element for another element, as non-wood adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

PARASIN also fails to cure the deficiencies of the above-noted documents. Whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, PARASIN specifically discloses that “[w]hen assembling joints, glue may be applied to the tongue and groove profiles, the application of glue is optional. The spaces 42 between the tongue head and the groove head chamfered surfaces define a gap to accommodate excess glue.” See col. 3, lines 16-20.

RYTHER also fails to cure the deficiencies of the above-noted documents. Again, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, RYTHER merely relates to an adhesive connection between ribs of a structural panel (see Abstract) and specifically discloses a joint which accommodates “any excess glue forced out by the joining process” (see col. 3, lines 13-20 and col. 4, lines 23-35).

Because the combination of the above-noted documents fails to disclose, or even suggest, at least the above-noted features of the instant invention, Appellant submits that no proper combination of these documents renders unpatentable the combination of features recited in at least dependent claim 33.

REJECTION OF DEPENDENT CLAIM 35 UNDER 35 U.S.C. § 103 IS IN ERROR

The additional rejection of claim 35 under 35 U.S.C. § 103(a) as being unpatentable over AT '560 in view of DE '962 in view of ROESCH, and further in view of ROBINS, SJOSTEDT, PARASIN and RYTHER is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 35 recites the configuration of claim 34 and that the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together. No proper combination of the above-noted documents discloses or suggests these additional features.

On pages 7-8 of the Final Office Action, the Examiner opines that the amount of adhesive which is applied would be obvious to one having ordinary skill in the art and alternatively that each of ROBINS, SJOSTEDT, PARASIN and RYTHER "recognize the undesirability of excess adhesive seepage and therefore teach to abate as much as possible any undesirable effects of any possible excess adhesive seepage". The Examiner also cites col. 4, lines 11-13 of ROBINS, col. 9, line 65 to col. 10, line 10 of SJOSTEDT, col. 3, lines 18-20 and claim 4 of PARASIN, and col. 1, lines 63-67, col. 2, lines 32-36, col. 3, lines 18-20, and col. 4, lines 33-35 of RYTHER.

Appellant disagrees. The Examiner has simply failed to identify any one or more of the recited features in the applied documents. As a result, Appellant submits that the Examiner has failed to establish a *prima facie* case of obviousness. Furthermore, Appellant submits that none of the above-noted applied documents discloses or suggests that the pre-applied adhesive layer or

the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together.

Appellant incorporates herein the arguments made above with regard to the obviousness rejection of claim 35 based on AT '560 in view of DE '962 and ROESCH.

ROBINS fails to cure the deficiencies of AT '560 in view of DE '962. ROBINS relates to an adhesive connection between tube parts of a waveguide (see col. 4, lines 7-13). Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, ROBINS specifically discloses to apply an amount which "completely fills the void between the butt joint sections 12, 12' (see col. 4, lines 8-10).

SJOSTEDT also fails to cure the deficiencies of the above-noted documents. SJOSTEDT relates to an adhesive connection between parts of a shipping container (see Abstract). Furthermore, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, SJOSTEDT specifically discloses that "[e]xcess adhesive material A in the joint 292 can be relieved into the spaces or the cavity 302 so as not to interfere with accurate fit-up of adjoining side panels" (see col. 10, lines 4-8).

In fact, in accordance with MPEP 2143, Appellant submit that it would not even have been predictable to put an adhesive of the type disclosed in ROBINS and SJOSTEDT on the panels of AT '560. The results simply would not be predictable. Also, as the disclosed

P26741.A21

substance is used for non-wood applications, it is not merely a simple substitution of one element for another element, as non-wood adhesive would not appear to work with wood-based panels, and would not result in a predictable solution.

PARASIN also fails to cure the deficiencies of the above-noted documents. Whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, PARASIN specifically discloses that “[w]hen assembling joints, glue may be applied to the tongue and groove profiles, the application of glue is optional. The spaces 42 between the tongue head and the groove head chamfered surfaces define a gap to accommodate excess glue.” See col. 3, lines 16-20.

RYTHER also fails to cure the deficiencies of the above-noted documents. Again, whereas the invention recites the application of an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together, RYTHER merely relates to an adhesive connection between ribs of a structural panel (see Abstract) and specifically discloses a joint which accommodates “any excess glue forced out by the joining process” (see col. 3, lines 13-20 and col. 4, lines 23-35).

CONCLUSION

Each of claims 1-3, 21-24 and 31-36 are patentable under 35 U.S.C. §§ 112, 102(b) and 103(a). Specifically, the applied art of record, even if properly combined, fails to disclose or suggest the unique combination of features recited in Appellant's claims 1-3, 21-24 and 31-36. Accordingly, Appellant respectfully requests that the Board reverse the decision of the Examiner to reject claims 1-3, 21-24 and 31-36 under 35 U.S.C. §103(a), and remand the application to the Examiner for withdrawal of the above-noted rejections.

Respectfully submitted,
F. KNAUSEDER



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Attachments: Claims Appendix, Evidence Appendix, and Related Proceedings Appendix

VIII CLAIMS ON APPEAL

1. A configuration for combining flat structural components of relatively low thickness along their narrow circumferential sides, where connecting members that interact on the tongue-and-groove principle are provided at the areas being connected, and the sides of the groove diverge from a groove base and converge at an end away from the groove base at an angle that is greater than an angle of divergence, where an opening width of the groove is greater than a foremost area of the tongue in a direction of insertion, which tongue exhibits wedge-shaped areas that diverge from front to back at the same angle as the sides of the groove, each of which wedge-shaped areas exhibits an undercut in a back area of the tongue that conforms to the groove cross-section, while the undercut's borders, adjoining the wedge-shaped areas, converge at the same angle as the groove sides toward a connecting bridge, whereby a locking mechanism is integrated into the tongue and the groove, wherein a pre-applied adhesive layer, or a pre-applied layer of a substance which activates an adhesive, is applied off-site and is present on the groove at least in the area of its divergent sides or on the tongue at least in the area of its divergent wedge-shaped area, or on both areas.

2. A configuration according to claim 1, wherein:

whereby locking elements are on at least one side of the groove and at least one side of the tongue, the locking elements conform to each other and extend over the entire length of the groove and the tongue are provided in the form of an indentation or recess and a projection, in order to hold connected components in a joined position;

the groove is formed directly in the component or is worked out of the same in order to provide for a connection of the components;

the tongue forms a single piece with the component or is worked out of the same;

a width of the groove increases from inside outward;

a thickness of the tongue decreases in the direction of an unattached end;

the projection on the tongue is triangular and exhibits a shorter back surface and a longer front surface;

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the recess in the groove exhibits a shorter contact surface that lies at a distance from the groove base and that rests against the shorter back surface of the projection;

at least one of the two groove sides flex elastically and outwards relative to the other groove side so that in a locked position the tongue is held by the groove sides with a squeezing action or is inserted into the groove while the groove sides bend elastically;

an angle between the longer front surface and the shorter back surface is 100° to 140° ;

two legs of the groove are equally as long as the respective longer front surface and the shorter back surface;

the recess in the groove exhibits a contact area close to the groove base that in the locked position at least partially rests against the longer front surface;

the longer front surface close to the groove base, or the section of the tongue area received by the recess, is four to eight times as long as the shorter back surface; and

the tongue is provided with the layer of adhesive or with the adhesive with an activating substance on at least the contact surface of the groove walls close to at least one of the groove base and on the longer front surface of the tongue.

3. A configuration according to claim 1, wherein:

the grooves of the individual panels are provided with the pre-applied adhesive layer, or the pre-applied layer of a substance which activates an adhesive having the form of a filling, a coating, a covering, or a strand, and

the tongues are provided with the pre-applied adhesive layer, or the pre-applied layer of a substance which activates an adhesive having the form of a coating, a surface impregnation, a covering, or a strand.

21. A configuration according to claim 2, wherein the shorter back surface and the longer front surface form two triangular sides.

22. A configuration according to claim 21, wherein the two triangular sides are between 110° to 130°.

23. A configuration according to claim 2, wherein the longer front surface is five to seven times as long as the shorter back surface.

24. A configuration according to claim 2, wherein both of the two groove sides flex elastically and outwards relative to the each other.

31. A configuration for combining flat structural panels, comprising:

a first panel having a groove with a groove opening and a groove base, the groove further having a first locking element and divergent sides,

a second panel having a tongue with a second locking element which interacts with the first locking element when the first panel and the second panel are joined, the tongue having a divergent wedge shape;

a pre-applied adhesive layer or a pre-applied layer of a substance which activates an adhesive applied off-site and being present on the groove at least in the area of the divergent sides or on the tongue at least in the area of the divergent wedge-shaped area, or on both areas, wherein

one of the first locking element and the second locking element is a recess and the other of the first locking element and the second locking element is a projection,

the projection and the recess have a triangular cross-section,

a triangular side closer to the groove opening is shorter and more inclined than a triangular side closer to the groove base such that when the tongue is inserted into the groove, the longer side of the projection slides on a section formed prior to the shorter triangular side until the projection has overcome an inner edge of the section and is received by the recess.

32. A configuration according to claim 31, wherein the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a decorative surface of the flat structural panels when the flat structural panels are joined together.

33. A configuration according to claim 1, wherein the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together.

34. A configuration for combining flat structural panels, comprising:

a first panel having a groove comprising a groove opening, a groove base, at least one locking element, and divergent sides extending from the groove base,

a second panel having a tongue comprising a divergent wedge shape and at least one locking element which interacts with the at least one locking element of the groove when the first panel and the second panel are joined by inserting the tongue into the groove; and

a pre-applied first layer arranged on at least one surface of the groove at least in an area of the divergent sides and a pre-applied second layer arranged on at least one surface of the tongue at least in an area of the divergent wedge shape,

wherein each of the pre-applied first and second layers comprises an adhesive layer or a pre-applied layer of a substance which activates an adhesive.

35. A configuration according to claim 34, wherein the pre-applied adhesive layer or the pre-applied layer of a substance which activates an adhesive is applied in an amount which is insufficient to cause any excess to well out onto a surface of the flat structural components when the flat structural components are joined together.

P26741.A21

36. A configuration according to claim 34, wherein the pre-applied first layer comprises one component of a two-component glue and wherein the pre-applied second layer comprises another component of the two-component glue.

IX EVIDENCE APPENDIX

This section lists evidence submitted pursuant to 37 U.S.C. §§1.130, 1.131, or 1.132, or any other evidence entered by the Examiner and relied upon by Appellant in this appeal, and provides for each piece of evidence a brief statement setting forth where in the record that evidence was entered by the Examiner. Copies of each piece of evidence are provided as required by 35 U.S.C. §41.37(c)(ix).

NO.	EVIDENCE	BRIEF STATEMENT SETTING FORTH WHERE IN THE RECORD THE EVIDENCE WAS ENTERED BY THE EXAMINER
1	N/A	N/A

X RELATED PROCEEDINGS APPENDIX

Pursuant to 37 U.S.C. §41.37(c)(x), copies of the following decisions rendered by a court or the Board in any proceeding identified above under 35 U.S.C. §41.37(c)(1)(ii) are enclosed herewith.

NO.	TYPE OF PROCEEDING	REFERENCE NO.	DATE
1	N/A	N/A	N/A